

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

CHRISTY STOKES, an individual,
Plaintiff,

v.

IVOLUTION SPORTS, INC., ZHEJIANG
BIO-INDUSTRY & TRADE CO., LTD,
AND AMAZON.COM LLC,
Defendant.

Case No. _____

NOTICE OF REMOVAL

Defendant Amazon.com LLC removes this civil action under 28 U.S.C. §§ 1332, 1441, and 1446. This Court has subject-matter jurisdiction and the case is removable because there is complete diversity between the plaintiff and defendants, the amount in controversy exceeds \$75,000, exclusive of interests and costs, and all defendants who have been served consent to removal.

A. Plaintiff's Allegations

Plaintiff is the mother of Albert Stokes, who was killed on June 3, 2014, when his motorcycle hit a car that suddenly turned in front of him. (Complaint, attached as Exhibit A, ¶¶ 2, 17, 19) Plaintiff settled wrongful death claims against the driver, Ralph Legan. (Compl. ¶ 28) She claims in this lawsuit that the helmet that Albert wore was “unreasonably dangerous and defectively manufactured in that in the accident the helmet’s straps became loose from the hangers due to a simple suture not being sewn correctly in place on the chin strap.” (Compl. ¶ 29)

B. Procedural Background

Plaintiff filed this action on June 1, 2017, against Amazon.com LLC, Ivolution Sports, Inc., and Zhejiang Bio-Industry & Trade Co., Ltd. in the Circuit Court of Laclede County, Missouri, cause number 17LA-CC00043 (the “State Court Action”). Plaintiff asserts claims for strict liability, negligence, and warranty against these defendants.

Plaintiff served Amazon.com LLC on August 10, 2017 and Ivolution Sports on August 1, 2017. Plaintiff has not yet served Zhejiang Bio-Industry & Trade Co. As that company is located in China, plaintiff will have to serve it under the Hague Convention, which typically takes several months to accomplish.

C. Removal is Proper Because there is Complete Diversity and the Amount in Controversy Exceeds \$75,000

This Court has subject-matter jurisdiction under 28 U.S.C. § 1332 because there is complete diversity between the Plaintiff and all defendants and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

Plaintiff Christy Stokes is a resident and citizen of Missouri, as was Albert Stokes, whose death is the subject of this lawsuit. Whether the Court looks to Christy Stokes’ citizenship or Albert’s under 28 U.S.C. section 1332(c)(2), the plaintiff’s citizenship is Missouri.

A corporation is a citizen of the states where it is incorporated and where it has its principal place of business. 28 U.S.C. § 1332(c)(1). The citizenship of limited liability companies and other unincorporated associations is judged by the citizenship of their members. *Americold Realty Trust v. Conagra Foods, Inc.*, 136 S. Ct. 1012 (2016); *GMAC Commercial Credit LLC v. Dillard Dept. Stores, Inc.*, 357 F.3d 827, 829 (8th Cir. 2004).

Amazon.com LLC is a limited liability company whose sole member is Amazon Corporate LLC. Amazon Corporate LLC’s sole member is Amazon Global Resources LLC, whose sole member is Amazon Fulfillment Services, Inc. Amazon Fulfillment Services, Inc. is a corporation organized under the laws of Delaware with its principal place of business in

Washington. Amazon.com LLC thus has the citizenship of Amazon Fulfillment Services, Inc., which is Delaware and Washington.

Ivolution Sports, Inc. is a corporation organized under the laws of California with its principal place of business in California, and is therefore a citizen of California.

Zhejiang Bio-Industry & Trade Co., Ltd. is a limited liability company organized under the laws of the People's Republic of China with its principal place of business in China. The members of Zhejiang Bio-Industry & Trade Co., Ltd. are individuals named Lv Gaoliang and Huang Jinying, who are believed to be residents and citizens of China. The citizenship of Zhejiang Bio-Industry & Trade Co., Ltd. is therefore China.

Plaintiff's complaint does not state an amount in controversy but she seeks damages for wrongful death, including Albert's pain and suffering, lost services and support, and medical and funeral expenses. Albert Stokes also had a minor daughter, A.T., who presumably was dependent on him. Plaintiff alleges in this action that A.T. was her own daughter, but this allegation is believed to be a typographical error. (Compl. ¶ 3) The Missouri court adjudicating Christy Stokes' lawsuit against the other driver appointed a Next Friend for A.T. (*Christy Stokes v. Ralph E. Legan*, Case No. 15LA-CC00003 (Laclede County Circuit Court)) The petition for settlement in that action recites that A.T. is the "natural daughter of the decedent." The parties to that action settled for the insurance limits of \$125,000.

Given the nature of the accident and type of damages claimed, the existence of a minor dependent, and the size of the settlement with deficient insurance funds in a related case, the amount in controversy exceeds \$75,000, exclusive of interest and costs.

D. Removal is Procedural Correct

This Notice of Removal is timely under 28 U.S.C. § 1446(b), because it was filed fewer than 30 days from service on any defendant.

Consent is only required from the defendants “who have been properly joined and served.” 28 U.S.C. § 1446(b)(2)(A). The only properly joined and served defendants are Amazon.com LLC and Ivolution Sports. Both consent to this removal.

Venue is proper under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action was pending.

In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders in the State Court Action are attached herein to the Index of Matters Filed (Exhibit B).

Per 28 U.S.C. § 1446(d), written notice of the filing of Defendant’s Original Notice of Removal was promptly given to all parties and to the clerk of the Laclede County Circuit Court of Missouri.

A civil cover sheet is attached hereto as Exhibit C and incorporated herein.

E. Conclusion

Amazon.com LLC requests that the State Court Action be removed and placed on this Court’s docket for further proceedings.

**TAYLOR, STAFFORD, CLITHERO
& HARRIS LLP**

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COUNSEL FOR DEFENDANT
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CERTIFICATE OF SERVICE

I, Monte P. Clithero, attorney for defendant Amazon.com, LLC in the above entitled cause, hereby certifies that on the 24th day of August, 2017, I electronically filed the foregoing with the Clerk of the District Court, Southern Division, using the CM/ECF filing system, which sent notification of such filing to attorney for plaintiff.

/s/ Monte P. Clithero
Monte P. Clithero

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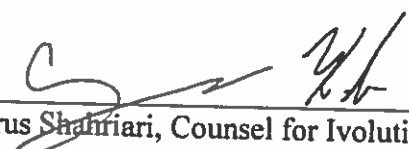
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CONSENT TO REMOVAL

Ivolution Sports, Inc. hereby consents to removal of this civil action from the Circuit Court of LaClede County to this Court.

Dated: August 22, 2017

By: _____


Cyrus Shahriari, Counsel for Ivolution Sports, Inc.